

Appl. No. 10/027,295
Atty. Docket No. 6823D
Reply Dated Sept. 2, 2004
Reply to Office Action of June 2, 2004

REMARKS

Claims 1-5 are pending in the present application and stand rejected.

Claim 1 has been amended to delete the phrase "which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hours, calculated according to a Water Vapor Transmission Test as set forth herein" and new claim 6 has been added to include the same limitation.

The specification has been amended to claim the benefit of U.S. Application Serial No. 08/884,069, filed on June 27, 1997, now U.S. Patent No. 6,118,041 (hereafter Patent '041); which is a continuation of U.S. Application Serial No. 08/345,159, filed November 28, 1994, now U.S. Patent No. 5,643,588 (hereafter Patent '588). The parent application (co-pending U.S. Application Serial No. 08/926,532, filed on September 10, 1997) of the present application, to which reference has already been claimed, was amended to recite priority to Patents '041 and '588 after the filing of the present application. A petition to accept an unintentionally delayed claim of benefit to an earlier filing date according to 37 C.F.R. §1.78(a)(3) is being submitted concurrently.

Under 35 U.S.C. § 120, a claim in a U.S. application is entitled to the benefit of the filing date of an earlier filed U.S. application if the subject matter of the claim is disclosed in the manner provided by 35 U.S.C. § 112, first paragraph, in the earlier filed application. With regard to Claim 1 as currently amended, both Patent '041 and Patent '588 provide ample disclosure of the claimed subject matter.

Patent '041 recites a disposable absorbent article comprising a liquid pervious topsheet, a liquid impervious backsheet, and an absorbent core positioned between the topsheet and backsheet. Col. 4, lines 19-22. The backsheet may permit vapors to escape from the absorbent core. Col. 5, lines 50-52. The diaper further comprises a lotion composition including from about 10% to about 95% of an emollient (Col. 13, lines 24-25) and from about 5% to about 90% of an immobilizing agent (Col. 16, lines 65-66), which includes waxes (Col. 16, lines 51-53). The lotion composition is applied to the outer surface (i.e., body facing surface) of a diaper topsheet. Col. 19, lines 2-4.

Patent '588 recites a disposable absorbent article comprising a liquid pervious topsheet, a liquid impervious backsheet, and an absorbent core positioned between the topsheet and backsheet. Col. 4, lines 19-22. The backsheet may permit vapors to escape from the absorbent core. Col. 5, lines 50-52. The diaper further comprises a lotion composition including from about 10% to about 95% of an emollient (Col. 13, lines 5-6) and from about 5% to about 90% of an immobilizing agent (Col. 16, lines 50-51), which includes waxes (Col. 16, lines 36-38). The lotion composition is applied to the outer surface (i.e., body facing surface) of a diaper topsheet. Col. 18, lines 55-57.

No new matter is believed to have been added. Consequently, entry of these amendments is respectfully requested.

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REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 1-5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,609,587 to Roe (hereafter "Roe") in view of U.S. Patent No. 5,695,868 to McCormack (hereafter "McCormack"). With regard to Claim 1, the Office states that "Roe discloses the present invention substantially as claimed. However, Roe does not disclose a vapor permeable backsheet, which defines a Water Vapor Transmission Rate of at least about 2300 grams per square meter per 24 hour, calculated according to a Water Vapor Transmission Test." The Office states that McCormack discloses a breathable film/nonwoven composite suitable for use as an outercover in absorbent articles and that the composite has a water vapor transmission rate of 4100 g/m²/24 hrs. The Office concludes that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the article of Roe with a vapor permeable backsheet having the claimed water vapor transmission rate for the benefits disclosed in McCormack." Applicants traverse the rejections.

The specification has been amended to claim benefit to an earlier filing date. The present application is a divisional application of U.S. Application Serial No. 08/926,532, filed on September 10, 1997 by Elder et al.; which is a continuation-in-part of U.S. Application Serial No. 08/884,069, filed on June 27, 1997, now U.S. Patent No. 6,118,041; which is a continuation of U.S. Application Serial No. 08/345,159, filed November 28, 1994, now U.S. Patent No. 5,643,588. As provided above, the subject matter of Claim 1, as amended, is fully disclosed in the manner provided by 35 U.S.C. 112, first paragraph, in both of the earlier filed applications. Claim 1 should be entitled to a priority date of November 28, 1994. Consequently, Roe is no longer a reference that the Office may cite against the Applicant given Roe's later filing date of August 3, 1995. Applicants respectfully request that the rejection of Claim 1 be withdrawn.

Request for Interference Applicants reassert the request for interference. Claim 1 and the specification have been amended so as to present Claim 1 in an allowable condition. As amended, Claim 1 of the present application corresponds substantially to the Proposed Count as presented in the filing dated December 20, 2001. Claim 1 recites "a vapor permeable backsheet." A vapor permeable backsheet will inherently possess a Water Vapor Transmission Rate (WVTR). As such, there exists interfering subject matter between the present invention and U.S. Patent No. 6,296,862 issued to Paul et al.

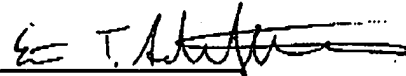
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CONCLUSION

Based on the foregoing amendments and reasons, Applicants respectfully request reconsideration and withdrawal of the rejections. Allowance of each of the pending claims is earnestly requested so that the Request for Interference as submitted on December 20, 2001 may be granted.

Respectfully Submitted,

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